

STATE OF VERMONT  
PUBLIC SERVICE BOARD

CPG #NM-905

Application of David and Julie Hollenbeck for a     )  
certificate of public good for an interconnected net    )  
metered photovoltaic system                                 )

Order entered:

**I. INTRODUCTION**

This case involves an application originally filed by David and Julie Hollenbeck ("Applicants") on March 8, 2010, requesting a certificate of public good ("CPG") pursuant to 30 V.S.A. §§ 219a and 248 and Vermont Public Service Board ("Board") Rule 5.100 for a net metering system. The net metering system consists of three pole-mounted photovoltaic arrays to be located on property owned by the Applicants in Shelburne, Vermont (the "Project Property").

A copy of the application was sent, by the Applicants, to all parties as specified in the Board's Rule 5.100. The application stated that any party wishing to submit comments or request a hearing in this matter needed to file comments with the Board within thirty days of the date that the application was sent.

In response to the application, the Board received letters from adjoining landowners Catherine and Jeremy Matosky, and Justin and Pat Lee; and the Shelburne Planning Commission expressing concerns with regard to the project and requesting that the Board require a hearing prior to granting approval of this project.

On May 17, 2010, Gregg Faber, the Hearing Officer appointed by the Board, conducted a site visit and prehearing conference in this matter. Parties in attendance at the site visit and prehearing conference were: the Applicants; Louise Porter, Esq., on behalf of the Vermont Department of Public Service; Jeremy Matosky; Justin and Pat Lee; Dean Pierce, Shelburne Town Planner; Amanda Lafferty, on behalf of the Shelburne Planning Commission; several members of the Shelburne Planning Commission; and representatives of AllEarth Renewables, the installers of the system.

## **II. FINDINGS**

Based upon the information in the record, including the application and its accompanying documents, the Board makes the following findings in this matter.

1. The proposed net metering project is located on property owned by the Applicants at 823 Shelburne-Hinesburg Road in Shelburne, Vermont. Application at Section 1.
2. The proposed photovoltaic system consists of three pole-mounted solar tracking photovoltaic arrays installed adjacent to the driveway on the Applicants' property. Application at Section 4 and attachments.
3. The proposed project has a total system-rated power output of 11.97 kW AC. The facility will be interconnected with the Green Mountain Power Corporation electrical distribution system. Application at Section 4 and attachments.
4. Each solar tracker is approximately 16 feet in height and 22 feet in width. Application at Section 8 and attachments.
5. The Applicants have certified that the project is in compliance with all of the provisions of Sections 3 and 8 of the application. Based on these submissions, we conclude that the project does not raise a significant issue with respect to the environmental criteria of 30 V.S.A. § 248. Application at Sections 3 and 8.
6. The Applicants have certified compliance with the insurance requirements as set forth in Section 3 of the application. Application at Section 3.

## **III. DISCUSSION & CONCLUSION**

The Board has received comments regarding the visual aesthetic impact of this proposed project. Board Rule 5.109(A) provides that the Board may hold a hearing for a net metering system when it determines that the system raises a substantive issue with respect to one or more of the criteria of 30 V.S.A. § 248. Pursuant to the Board's Order of April 19, 1999, in PSB Docket No. 6181, *"Investigation into the Use of a Net Metering System for the Purchase and Sale of Electricity from Small Electrical Generating Systems to and from Electric Companies,"* parties with objections or concerns must make a showing that the application raises a significant issue with respect to one or more substantive criteria applicable to the proposed net metering

system. Accordingly, the Net Metering Application Form states that persons requesting a hearing regarding a net metering project "must make a showing that the application raises a significant issue regarding one or more of the substantive criteria applicable to the proposed net metering system."<sup>1</sup>

Pursuant to 3 V.S.A. § 811, the Board has read the record, including correspondence from the parties and the transcript of the prehearing conference, and we conclude that the neighboring landowners and the Shelburne Planning Commission have not shown that the project raises a significant issue with respect to the applicable criteria. Both the neighbors' and the Planning Commission's comments focus primarily on the aesthetic impacts of the project. The letters from the Matoskys and the Lees both express support for renewable energy in general. However, both neighboring landowners contend that the project will be "highly visible" and, thus, will significantly impact views from their properties to the East.<sup>2</sup> The Planning Commission argues that the aesthetic impacts of the project violate land conservation measures contained in the Shelburne Town Plan and, therefore, the project raises significant issues with respect to 30 V.S.A. §§ 248(b)(1) and 248(b)(5).<sup>3</sup> The Board's net-metering rule sets forth the following analytical process for determining whether a project will have an undue adverse impact on aesthetics and scenic or natural beauty:

**5.108 Aesthetic Evaluation of Net Metered Projects**

(A) The Board has adopted the Vermont Environmental Board's Quechee analysis for guidance in assessing the aesthetic impacts of net metered projects, including wind turbines. In determining whether a project raises a significant issue with respect to aesthetic criteria contained in 30 V.S.A. 248(b)(5), the Board is guided by the two-part test outlined below:

1. First a determination must be made as to whether a project will have an adverse impact on aesthetics and the scenic and natural beauty. In order to find that it will have an adverse impact, a project must be out of character with its surroundings. Specific factors used in making this evaluation include the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors and materials with the immediate

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1. State of Vermont Public Service Board Application for a Certificate of Public Good for Interconnected Net Metered Power Systems, at 1. As noted above, the adjoining landowners and other entities specified in Board Rule 5.100 received a copy of the application form for the project before us.

2. Letter from Catherine and Jeremy Matosky, dated March 26, 2010, at 1; letter from Pat and Justin Lee, dated April 1, 2010, at 1.

3. *See generally* letter from Shelburne Planning Commission, dated March 31, 2010.

- environment, the visibility of the project, and the impact of the project on open space.
2. The next step in the two-part test, once a conclusion as to the adverse effect of the project has been reached, is to determine whether the adverse effect of the project is "undue." The adverse effect is considered undue when a positive finding is reached regarding any one of the following factors:
    - a. Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?
    - b. Have the applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings?
    - c. Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?
  3. Analysis of whether a particular project will have an "undue" adverse effect on aesthetics and scenic or natural beauty is also significantly informed by the overall societal benefits of the project.

The three proposed solar trackers, at approximately 16 feet in height and 22 feet in width, are relatively small in comparison to the Applicants' house and other homes in the vicinity. While the project will be visible to the neighboring landowners, it will be located about over 500 feet from the nearest residence and the Shelburne-Hinesburg Road. In addition, views of the project from many of the neighboring properties and will be at least partially blocked by trees and other vegetation to the north and west of the project. Thus, we conclude that the neighboring landowners have not shown that the project is out of character with its surroundings and, consequently, have not shown that the project raises a significant issue with respect to adverse aesthetic impacts.

The Shelburne Planning Commission argues that the project "must comply" with the land conservation measures included in the Town Plan with respect to development in rural areas.<sup>4</sup> Specifically, the Planning Commission has identified the following "Land Conservation Measures" which it contends are applicable to the project:

Prevent development that would have undue adverse impacts on the Town's scenic beauty, open lands, shorelines, and ridgelines with particular attention paid to roadside views or views from Lake Champlain.

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4. Letter from Planning Commission at 1-2.

Use the policies and maps contained in this Plan as a clear written community standard in the Section 248 and Act 250 processes to prevent development that would have undue adverse impacts on the Town's scenic resources.

The Planning Commission also argues that the project would be located on the "boundary" of areas designated as "Foreground area of Secondary Views" and "Middleground area" on a significant view map.<sup>5</sup>

As we stated above, we conclude that the project, because of its small size relative to other structures in the immediate area, does not raise a significant issue with respect to aesthetics. Therefore, the project is not inconsistent with the land conservation measures cited by the Planning Commission which limit development with "undue adverse impacts" in rural areas. The project will be located on the boundaries of Foreground and Middleground areas as depicted on the significant view map submitted by the Planning Commission. However, the Planning Commission has not cited to any specific provisions limiting or prohibiting this type of development in these areas. We also note that several larger structures, including the Applicants' home, and the homes of the Lees and the Matoskys, have been located in these areas. Therefore, the Planning Commission has not shown that the project will raise a significant issue with respect to 30 V.S.A. §§ 248(b)(1) or 248(b)(5).

Consequently, because we find that the project does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248, further proceedings in this matter are unnecessary.

#### **IV. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that the photovoltaic net metering system proposed by the Applicants, in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont pursuant to 30 V.S.A. § 219a, and a certificate of public good to that effect shall be issued in this matter, pursuant to 30 V.S.A. §§ 219a and 248.

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5. Letter from Planning Commission at 2-3.

DATED at Montpelier, Vermont, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_)  
\_\_\_\_\_) PUBLIC SERVICE  
\_\_\_\_\_)  
\_\_\_\_\_) BOARD  
\_\_\_\_\_) OF VERMONT  
\_\_\_\_\_)

OFFICE OF THE CLERK

Filed: January 28, 2010

Attest: \_\_\_\_\_  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*